

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 19, 2021

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COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

CASE NO. INS-2021-00001

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Suitability in Annuity Transactions

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: scc.virginia.gov/case.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to rules set forth in Chapter 45 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Suitability in Annuity Transactions ("Rules"), which revise the Rules set out at 14 VAC 5-45-10 through 14 VAC 5-45-47 and adds new forms.

The proposed revisions to Chapter 45 are necessary to incorporate provisions contained in the revised National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation. These revisions add several new definitions, require insurers and agents to follow specified best interest obligations when recommending an annuity, require

agents to use consumer disclosure forms, and require agents to complete a one-time four-credit annuity suitability training course that includes the best interest standard.

NOW THE COMMISSION is of the opinion that the proposed revisions submitted by the Bureau to amend the Rules set out at 14 VAC 5-45-10 through 14 VAC 5-45-47 should be considered for adoption with a proposed effective date of May 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to amend Chapter 45 of Title 14 of the Virginia Administrative Code, by revising the Rules set out at 14 VAC 5-45-10 through 14 VAC 5-45-47 and adding new forms are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amendments to Chapter 45 shall file such comments or hearing requests on or before March 19, 2021, with Bernard Logan, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2021-00001. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: scc.virginia.gov/case. All comments shall refer to Case No. INS-2021-00001.

(3) If no written request for a hearing on the proposal to amend rules as outlined in this Order is received on or before March 19, 2021, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the amendments in Chapter 45 of Title 14 of the Virginia Administrative Code as submitted by the Bureau.

(4) The Bureau shall provide notice of the proposal to all companies, agencies, and agents licensed by the Commission to sell annuities or variable annuities in Virginia and to all interested persons.

(5) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposal to amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: scc.virginia.gov/case.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

A COPY hereof shall be sent by the Clerk of the Commission to:
C. Meade Browder, Jr., Senior Assistant Attorney General, mbrowder@oag.state.va.us, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

Project 6588 - Proposed**State Corporation Commission, Bureau Of Insurance****Rules Governing Suitability in Annuity Transactions****Chapter 45****Rules Governing Suitability in Annuity Transactions****14VAC5-45-10. Purpose and scope.**

The purpose of this chapter is to ~~set forth rules and procedures for recommendations to~~ require agents, as defined in this chapter, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are ~~appropriately~~ effectively addressed. This chapter shall apply to any sale or recommendation to purchase, exchange, or replace of an annuity ~~made to a consumer by an agent, or insurer where no agent is involved, that results in the purchase, exchange, or replacement recommended.~~

14VAC5-45-20. Definitions.

The following words and terms when used in this chapter shall have the following ~~meaning~~ meanings, unless the context clearly indicates otherwise:

~~"Agent" or "insurance agent"~~ "Agent," "insurance agent," "producer," or "insurance producer," when used without qualification, means an individual or business entity that sells, solicits, or negotiates contracts of insurance or annuity in this Commonwealth.

"Annuity" means a fixed, variable, or modified guaranteed annuity that is individually solicited, whether the product is classified as an individual ~~annuity~~ or group annuity.

"Board" means the Virginia Insurance Continuing Education Board established pursuant to § 38.2-1867 of the Code of Virginia.

"Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an agent in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

"Commission" means the State Corporation Commission.

"Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs and financial objectives, including, at a minimum, the following:

1. Age;
2. Annual income;
3. Financial situation and needs, including debts and other obligations;
4. Financial experience;
5. Insurance needs;
6. Financial objectives;
7. Intended use of the annuity;
8. Financial time horizon;
9. Existing assets or financial products, including investment, annuity and insurance holdings;
10. Liquidity needs;
11. Liquid net worth;

12. Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;

13. Financial resources used to fund the annuity; and

14. Tax status.

"Continuing education credit" or "CE credit" means one continuing education credit as defined in § 38.2-1867 of the Code of Virginia.

"Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to § 38.2-1867 of the Code of Virginia.

"FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

"Insurer" means an insurance company required to be licensed under the laws of this Commonwealth to provide insurance products, including annuities.

"Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by agents.

"Material conflict of interest" means a financial interest of the agent in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.

"Material conflict of interest" does not include cash compensation or non-cash compensation.

"Non-cash compensation" means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.

"Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

"Recommendation" means advice provided by an agent, ~~or an insurer where no agent is involved,~~ to an individual consumer that ~~results~~ was intended to result or does result in a purchase, exchange, ~~or replacement, or surrender~~ of an annuity in accordance with that advice. Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

"Replacement" means a transaction in which a new ~~policy or contract~~ annuity is to be purchased, and it is known or should be known to the proposing agent, or to the proposing insurer ~~if there is no~~ whether or not an agent is involved, that by reason of the transaction, an existing annuity or other insurance ~~policy or contract~~, has been or is to be any of the following:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;
2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. Reissued with any reduction in cash value; or
5. Used in a financed purchase.

~~"Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:~~

- ~~1. Age;~~
- ~~2. Annual income;~~

- ~~3. Financial situation and needs, including the financial resources used for the funding of the annuity;~~
- ~~4. Financial experience;~~
- ~~5. Financial objectives;~~
- ~~6. Intended use of the annuity;~~
- ~~7. Financial time horizon;~~
- ~~8. Existing assets, including investment and life insurance holdings;~~
- ~~9. Liquidity needs;~~
- ~~10. Liquid net worth;~~
- ~~11. Risk tolerance; and~~
- ~~12. Tax status.~~

"SEC" means the United States Securities and Exchange Commission.

"Virginia Securities Act" means §13.1-501 et seq. of the Code of Virginia.

14VAC5-45-30. Exemptions.

Unless otherwise specifically included, this chapter shall not apply to transactions involving:

1. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this chapter.
2. Contracts used to fund:
 - a. An employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974 (29 USC § 1001 et seq.);

- b. A plan described by 26 USC § 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, if established or maintained by an employer;
- c. A government or church plan defined in 26 USC § 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 USC § 457 of the Internal Revenue Code; or
- d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- ☐ 3. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- £ 4. Preneed funeral contracts as defined in § 54.1-2800 of the Code of Virginia.

14VAC5-45-40. Duties of insurers and agents.

~~A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his investments and other insurance products and as to his financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~ Best Interest Obligations. An agent, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the agent's or the insurer's financial interest ahead of the consumer's interest. An agent has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:

1. Care Obligation.

a. The agent, in making a recommendation shall exercise reasonable diligence, care and skill to:

(1) Know the consumer's financial situation, insurance needs and financial objectives;

(2) Understand the available recommendation options after making a reasonable inquiry into options available to the agent;

(3) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

(4) Communicate the basis or bases of the recommendation.

b. The requirements under subdivision 1 a of this subsection include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

c. The requirements under subdivision 1 a of this subsection require an agent to consider the types of products the agent is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the agent or other possible alternative products or strategies available in the market at the time of the recommendation. Agents shall be held to standards applicable to agents with similar authority and licensure.

d. The requirements under subdivision 1 of this subsection do not create a fiduciary obligation or relationship.

e. The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of subdivision 1 may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

f. The requirements under subdivision 1 a of this subsection include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.

g. The requirements under subdivision 1 a of this subsection apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar agent enhancements, if any.

h. The requirements under subdivision 1 a of this subsection do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

i. The requirements under subdivision 1 a of this subsection do not mean the agent has ongoing monitoring obligations under the care obligation under subdivision 1 a of this subsection, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the agent.

j. In the case of an exchange or replacement of an annuity, the agent shall consider the whole transaction, which includes taking into consideration whether:

(1) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(2) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(3) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

k. Nothing in this chapter should be construed to require an agent to obtain any license other than an agent license with the appropriate line of authority to sell, solicit or negotiate insurance in this Commonwealth, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this chapter; provided the agent does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

2. Disclosure obligation.

a. Prior to the recommendation or sale of an annuity, the agent shall prominently disclose to the consumer on the commission's Insurance Agent (Producer) Disclosure for Annuities form:

(1) A description of the scope and terms of the relationship with the consumer and the role of the agent in the transaction;

(2) An affirmative statement on whether the agent is licensed and authorized to sell the following products:

(a) Fixed annuities;

(b) Fixed indexed annuities;

(c) Variable annuities;

(d) Life insurance;

(e) Mutual funds;

(f) Any securities as defined in the Virginia Securities Act; and

(g) Certificates of deposit;

(3) An affirmative statement describing the insurers the agent is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:

(a) From one insurer;

(b) From two or more insurers; or

(c) From two or more insurers although primarily contracted with one insurer.

(4) A description of the sources and types of cash compensation and non-cash compensation to be received by the agent, including whether the agent is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other agent or by fee as a result of a contract for advice or consulting services; and

(5) A notice of the consumer's right to request additional information regarding cash compensation described in subdivision 2 b of this subsection;

b. Upon request of the consumer or the consumer's designated representative, the agent shall disclose:

(1) A reasonable estimate of the amount of cash compensation to be received by the agent, which may be stated as a range of amounts or percentages; and

(2) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

~~4. c. The~~ Prior to or at the time of the recommendation or sale of an annuity, the agent shall have a reasonable basis to believe the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; mortality and expense fees; investment advisory fees; any annual fees; potential charges for and features of riders of other options of the annuity; limitations on interest returns; potential changes in non-guaranteed elements of the annuity; insurance and investment components; and market risk;

~~2. The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;~~

~~3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer's suitability information; and~~

~~4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:~~

~~a. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;~~

- ~~b. The consumer would benefit from product enhancements and improvements; and~~
- ~~c. The consumer has had another annuity exchange or replacement, and, in particular, an exchange or replacement within the preceding 36 months.~~

3. Conflict of interest obligation. An agent shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

4. Documentation obligation. An agent shall at the time of recommendation or sale:

a. Make a written record of any recommendation and the basis for the recommendation subject to this chapter;

b. Obtain a consumer signed statement on the commission's Consumer Refusal to Provide Information form documenting:

(1) A customer's refusal to provide the consumer profile information, if any; and

(2) A customer's understanding of the ramifications of not providing their consumer profile information or providing insufficient consumer profile information; and

c. Obtain a consumer signed statement on the commission's Consumer Decision to Purchase an Annuity NOT Based on a Recommendation form acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the agent's recommendation.

5. Application of the best interest obligation. Any requirement applicable to an agent under this subsection shall apply to every agent who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the agent has had any direct contact with the consumer. Activities such as providing or delivering marketing or

educational materials, product wholesaling or other back office product support, and general supervision of an agent do not, in and of themselves, constitute material control or influence.

~~B. Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an agent, or insurer where no agent is involved, shall make reasonable efforts to obtain the consumer's suitability information.~~

~~C. Except as permitted under subsection D of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.~~

~~D.~~ Transactions not based on a recommendation.

1. Except as provided in subdivision 2 of this subsection, ~~neither an agent, nor an insurer where no agent is involved,~~ an agent shall have ~~any~~ no obligation to a consumer under subsection subdivision A or C 1 of this section related to any annuity transaction if any of the following occurs:

- a. No recommendation is made;
- b. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
- c. A consumer refuses to provide relevant ~~suitability~~ consumer profile information requested by the insurer or agent and the annuity transaction is not recommended;
- d. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the ~~insurer or agent~~; or
- e. A consumer fails to provide complete or accurate information.

2. An insurer or agent's recommendation subject to subdivision 1 of this subsection shall be reasonable under all the circumstances actually known to the insurer or agent at the time of the recommendation.

C. Supervision system.

1. Except as permitted under subsection B of this section, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.

~~E. An agent, or where no agent is involved the responsible insurer representative, shall at the time of sale:~~

- ~~1. Make a record of any recommendation subject to subsection A of this section;~~
- ~~2. Obtain a customer signed statement, documenting a customer's refusal to provide suitability information, if any; and~~
- ~~3. Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the agent's or insurer's recommendation.~~

~~F. 1.~~ 2. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter is established and maintained by complying with subdivisions ~~3~~ 4 and ~~4~~ 5 of this subsection or shall establish and maintain such a system, including the following:

- a. The insurer shall establish and maintain reasonable procedures to inform its agents of the requirements of this chapter and shall incorporate the requirements of this chapter into relevant agent training manuals;

- b. The insurer shall establish and maintain standards for agent product training and shall establish and maintain reasonable procedures to require its agents to comply with the requirements of 14VAC5-45-45;
- c. The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its agents;
- d. The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure ~~that~~ there is a reasonable basis to determine that ~~a recommendation is suitable~~ the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
- e. The insurer shall establish and maintain reasonable procedures to detect recommendations that are not ~~suitable~~ in compliance with subsections A, B, D and E of this section. This may include confirmation of ~~consumer suitability~~ the consumer's consumer profile information, systematic customer surveys, agent and consumer interviews, confirmation letters, agent statements or attestations, and programs of internal monitoring. Nothing in this subdivision prevents an insurer from complying with this subdivision by applying sampling procedures, or by confirming ~~suitability~~ the consumer profile information or other required information under this section after issuance or delivery of the annuity; ~~and~~

- f. The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether an agent has provided to the consumer the information required to be provided under this section;
 - g. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;
 - h. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subdivision are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and
 - i. The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
- 2- ~~3.~~ 3. An agent ~~and independent agency~~ either shall adopt a system established by an insurer to supervise recommendations of its agents that is reasonably designed to achieve compliance with this chapter or shall establish and maintain such a system, including, but not limited to:
- a. Maintaining written procedures; and
 - b. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this chapter.

~~3.~~ 4. An insurer may contract with a third party, including an agent or independent agency, to establish and maintain a system of supervision as required by subdivision ~~4~~ 2 of this subsection with respect to agents under contract with or employed by the third party.

~~4.~~ 5. An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision ~~3~~ 4 of this subsection is performing the functions required under subdivision ~~4~~ 2 of this subsection and shall take action that is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

a. The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

b. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under subdivision ~~3~~ 4 of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

~~5.~~ 6. An insurer that contracts with a third party pursuant to subdivision ~~3~~ 4 of this subsection and that complies with the requirements to supervise in subdivision ~~4~~ 5 of this subsection shall have fulfilled its responsibilities under subdivision ~~4~~ 2 of this subsection.

~~6.~~ 7. An insurer, or agent, or independent agency is not required by subdivision ~~4~~ 2 or ~~2~~ 3 of this subsection to:

- a. Review, or provide for review of, all agent-solicited transactions; ~~or~~
- b. Include in its system of supervision an agent's recommendations to consumers of products other than the annuities offered by the insurer, or agent, or independent agency; or
- c. Consider or compare options available to the agent or compensation relating to those options other than annuities or other products offered by the insurer.

~~7. 8.~~ An agent ~~or independent agency~~ contracting with an insurer pursuant to subdivision ~~3 4~~ of this subsection, when requested by the insurer pursuant to subdivision ~~4 5~~ of this subsection, shall promptly give a certification as described in subdivision ~~4 5~~ or give a clear statement that it is unable to meet the certification criteria.

~~8. 9.~~ No person may provide a certification under subdivision ~~4 5~~ a of this subsection unless:

- a. The person is a senior manager with responsibility for the delegated functions; and
- b. The person has a reasonable basis for making the certification.

~~G. D.~~ An agent or insurer shall not dissuade or attempt to dissuade a consumer from:

- 1. Truthfully responding to an insurer's request for confirmation of ~~suitability~~ the consumer profile information;
- 2. Filing a complaint; or
- 3. Cooperating with the investigation of a complaint.

~~H. Sales~~ E. Safe harbor. Recommendations and sales of annuities made in compliance with ~~FINRA requirements pertaining to suitability and supervision of annuity transactions~~ comparable standards shall satisfy the requirements under this chapter:

1. This subsection applies to ~~FINRA member broker-dealer~~ all recommendations and sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. However, nothing in this subsection shall limit the commission's ability to investigate and enforce ~~(including investigate)~~ the provisions of this chapter.

2. Nothing in subdivision 1 of this subsection shall limit the insurer's obligation to comply with subdivision C 1 of this section, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

3. For subdivision 1 of this subsection to apply, an insurer shall:

a. Monitor the ~~FINRA member broker-dealer~~ relevant conduct of the financial professional seeking to rely on subdivision 1 of this subsection or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal securities laws or the Virginia Securities Act using information collected in the normal course of an insurer's business; and

b. Provide to the ~~FINRA member broker-dealer~~ entity responsible for supervising the financial professional seeking to rely on subdivision 1 of this subsection, such as the financial professional's broker-dealer or investment adviser registered under federal securities laws or the Virginia Securities Act, information and reports that are reasonably appropriate to assist ~~the FINRA member broker-dealer~~ such entity to maintain its supervision system.

4. For purposes of this subsection, "financial professional" means an agent that is regulated and acting as:

a. A broker-dealer registered under federal securities laws or the Virginia Securities Act or a registered representative of a broker-dealer;

b. An investment adviser registered under federal securities laws or the Virginia Securities Act or an investment adviser representative associated with the federal or Virginia registered investment adviser; or

c. A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

5. For purposes of this subsection, "comparable standards" means:

a. With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest (17 CFR Part 240.15l1) and any amendments or successor regulations thereto;

b. With respect to investment advisers registered under federal securities laws or the Virginia Securities Act or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 (15 USC §80a-1 et seq.) or the Virginia Securities Act, including but not limited to, the Form ADV (<https://www.sec.gov/divisions/investment/iard/ia-forms.shtml>) and interpretations; and

c. With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

4. F. Compliance with FINRA Rule 2111 (<https://www.finra.org/rules-guidance/rulebooks/finra-rules/2111>) pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the commission's ability to enforce the provisions of this chapter.

14VAC5-45-45. Agent training.

A. An agent shall not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided product specific training standards and materials to comply with this subsection.

B. Training requirements are as follows:

1. ~~An agent~~ Agents who engages hold a life insurance line of authority and engage in the sale of annuity products shall complete a one-time four-credit annuity suitability training course which includes the best interest standard approved as continuing education by the ~~Insurance Continuing Education~~ Board in accordance with § 38.2-1867 of the Code of Virginia and provided by the ~~Insurance Continuing Education~~ Board approved education provider.

2. Agents who hold a life insurance line of authority prior to May 1, 2021 and ~~who desire to sell annuities~~ engage in the sale of annuity products shall complete the requirements of this subsection ~~by January 1, 2018~~ within six months after May 1, 2021. Individuals who obtain a life insurance line of authority on or after ~~January 1, 2018~~, May 1, 2021, may not engage in the sale of annuities until the one-time four-credit annuity suitability

training course which includes the best interest standard required under this subsection has been completed.

3. The minimum length of the training required under this subsection shall be sufficient to qualify for at least four CE credits, but may be longer.

4. The training required under this subsection shall include information on the following topics:

- a. The types of annuities and various classifications of annuities;
- b. Identification of the parties to an annuity;
- c. How product specific annuity contract features affect consumers;
- d. The application of income taxation of qualified and nonqualified annuities;
- e. The primary uses of annuities; and
- f. Appropriate standard of conduct, sales practices ~~and~~, replacement and disclosure requirements.

5. Providers of courses intended to comply with this subsection shall cover all topics listed in subdivision 4 of this subsection and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to those in subdivision 4 of this subsection.

6. A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this Commonwealth and comply with the rules and guidelines applicable to agent continuing education courses as set forth in § 38.2-1867 of the Code of Virginia.

7. An agent who has completed the one-time four-credit annuity suitability training course approved by the Board prior to May 1, 2021 shall, within six months after May 1, 2021, complete either:

a. A new four-credit training course which includes the best interest standard approved by the Board; or

b. An additional one-time one-credit best interest standard training course approved by the Board and provided by the Board approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended chapter.

8. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with the rules and guidelines set forth in § 38.2-1867 of the Code of Virginia.

~~8.~~ 9. Providers of annuity training shall comply with the reporting requirements in § 38.2-1867 of the Code of Virginia and shall issue certificates of completion ~~in accordance with § 38.2-1867 of the Code of Virginia.~~

~~9.~~ 10. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this Commonwealth.

~~10.~~ 11. An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commission-sponsored database systems or vendors or from a reasonably reliable

commercial database vendor that has a reporting arrangement with approved insurance education providers.

14VAC5-45-47. Recordkeeping.

A. Insurers, agencies, and agents shall maintain or be able to make available to the commission records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an agent.

B. Records required to be maintained by this chapter may be maintained in paper, photographic, micro-process, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

FORMS (14VAC5-45)

[Insurance Agent \(Producer\) Disclosure for Annuities, CN01 \(Eff. 5/1/2021\)](#)

[Consumer Refusal to Provide Information, CN02 \(Eff. 5/1/2021\)](#)

[Consumer Decision to Purchase an Annuity NOT Based on a Recommendation, CN03 \(Eff. 5/1/2021\)](#)

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES
Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION ("Me", "I", "My")

First Name: _____ Last Name: _____
 Business\Agency Name: _____ Website: _____
 Business Mailing Address: _____
 Business Telephone Number: _____
 Email Address: _____
 National Producer Number in [state]: _____

CUSTOMER INFORMATION ("You", "Your")

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to You in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

- ☐ Fixed or Fixed Indexed Annuities
☐ Variable Annuities
☐ Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non- insurance financial products that I am licensed and authorized to provide advice about or to sell.

- ☐ Mutual Funds
☐ Stocks/Bonds
☐ Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

<input type="checkbox"/> Annuities from Only One (1) Insurer	<input type="checkbox"/> Annuities from Two or More Insurers
<input type="checkbox"/> Annuities from Two or More Insurers although I primarily sell annuities from:	

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

Commission, which is usually paid by the insurance company or other sources. If other sources, describe:

Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

Other (Describe): _____

<i>If You have questions about the above compensation I will be paid for this transaction, please ask me.</i>

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

***Drafting Note:** This disclosure may be adapted to fit the particular business model of the producer. As an example, if the producer only receives commission or only receives a fee from the consumer, the disclosure may be refined to fit that particular situation. This form is intended to provide an example of how to communicate producer compensation, but compliance with the regulation may also be achieved with more precise disclosure, including a written consulting, advising or financial planning agreement.*

***Drafting Note:** The acknowledgement and signature should be in immediate proximity to the disclosure language.*

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

Customer Signature

Date

Agent (Producer) Signature

Date

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are You being given this form?

You're buying a financial product – an annuity.

To recommend a product that effectively meets Your needs, objectives and situation, the agent, broker, or company needs information about You, Your financial situation, insurance needs and financial objectives.

If You sign this form, it means You have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets Your needs, objectives and situation. You may lose protections under the Insurance Code of Virginia if You sign this form or provide inaccurate information.

Statement of Purchaser:

☐ I **REFUSE** to provide this information at this time.

☐ I have chosen to provide LIMITED information at this time.

Customer Signature

Date

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation**Do Not Sign This Form Unless You Have Read and Understand It.**

Why are you being given this form? You are buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about You, Your financial situation, insurance needs and financial objectives.

If You sign this form, it means You know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of Virginia.

Customer Signature

Date

Agent (Producer) Signature

Date

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES
Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION ("Me", "I", "My")

First Name: _____ Last Name: _____
 Business\Agency Name: _____ Website: _____
 Business Mailing Address: _____
 Business Telephone Number: _____
 Email Address: _____
 National Producer Number in [state]: _____

CUSTOMER INFORMATION ("You", "Your")

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to You in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

- ☐ Fixed or Fixed Indexed Annuities
☐ Variable Annuities
☐ Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non- insurance financial products that I am licensed and authorized to provide advice about or to sell.

- ☐ Mutual Funds
☐ Stocks/Bonds
☐ Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

<input type="checkbox"/> Annuities from Only One (1) Insurer	<input type="checkbox"/> Annuities from Two or More Insurers
<input type="checkbox"/> Annuities from Two or More Insurers although I primarily sell annuities from:	

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

Commission, which is usually paid by the insurance company or other sources. If other sources, describe:

Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

Other (Describe): _____

<i>If You have questions about the above compensation I will be paid for this transaction, please ask me.</i>

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

***Drafting Note:** This disclosure may be adapted to fit the particular business model of the producer. As an example, if the producer only receives commission or only receives a fee from the consumer, the disclosure may be refined to fit that particular situation. This form is intended to provide an example of how to communicate producer compensation, but compliance with the regulation may also be achieved with more precise disclosure, including a written consulting, advising or financial planning agreement.*

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Statement of Purchaser:

☐ I **REFUSE** to provide this information at this time.

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To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about You, Your financial situation, insurance needs and financial objectives.

If You sign this form, it means You know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of Virginia.

Customer Signature

Date

Agent (Producer) Signature

Date